

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT, ARIZONA

THIS AGREEMENT is entered into 13 July, 2001, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the State of Arizona acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the Town of Gilbert, acting by and through its MAYOR and CITY COUNCIL (the "Town").

I. RECITALS:

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. On February 29, 2000, the Town adopted Ordinance No. 1250, creating the Santan Freeway Corridor Overlay District ("Overlay District") and establishing requirements for noise mitigation measures for noise-sensitive uses located in the Overlay District. One of the noise mitigation requirements of the Overlay District is the construction of noise barriers by Developers, pursuant to the requirements of the State, for those noise-sensitive uses located in the Overlay District.

4. The Town and the State agree it would be in the best interest of the public for the State to construct the noise barriers, within State rights of way, herein referred to as the "Project", during the State's construction of the Santan Freeway. Upon agreement of costs by the parties herein, the State will approve a sum equivalent to the Lump Sum Cost of Construction for the noise barriers and the Town will deposit the agreed upon amount (funded by the Developers) with the State, thus satisfying the Developer's obligation under the Town's Ordinance. As used in this agreement "Lump Sum Cost of Construction" shall include, but not limited to all costs of engineering, surveys, mobilization, construction, construction administration and contingencies of the Project meeting the requirements of the State for noise barriers for the Santan Freeway.

NO. 24758
Filed with the Secretary of State
Date Filed: 07/13/01
Steph Boyles
Secretary of State

By Dick V. Greenwald

5. The Project is to be constructed within the State rights of way and becomes the property of the State upon completion of each construction Project. The funds deposited by the Town are to be used solely towards the construction of the Project(s). The purpose of this agreement is to define each party's responsibility in facilitating the transfer of Developer's funds deposited with the Town, to the State

THEREFORE, in consideration of the mutual promises and covenants made herein, the parties agree as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon notification by the Town of the location specified in the Developer's application, and approval thereof, advise the Town in writing, of the Lump Sum Cost for Construction of the Project. Such lump sum cost shall be approved on behalf of the State by the Department of Transportation's (ADOT's) Environmental Planning and Valley Project Management Groups.

b. Upon receipt of the agreed upon amount of the Lump Sum Cost of Construction from the Town, construct the Project, applying funds provided by the Town, during the State's construction of the Santan Freeway. In the event the cost of the engineering, surveys, construction, construction administration and contingencies exceeds the Lump Sum Cost of Construction, the State will be responsible for Project costs in excess of the Lump Sum Cost of Construction.

c. Provide, through the Project Manager of the Valley Project Management Group, project numbers and agreed upon amounts of the Lump Sum Cost of Construction to its Cost Accounting office on a project by project basis (*meaning: completion of each noise barrier*).

d. Upon completion of each construction Project(s), be responsible for providing maintenance to the Project.

2. The Town will:

a. In accordance with Ordinance No. 1250, execute an agreement with the Developer (example shown on Exhibit A, attached hereto and made a part hereof).

b. Provide the State with written notification of each location specified in the Developer's application, upon acceptance by the Town of the Developer's application, and on a project by project basis, for approval by the State, of the Lump Sum Costs of Construction of the Project.

c. Upon approval by the State, and receipt of funds from a Developer (pursuant to the Town's Ordinance) forward said funds to the State and request the State apply said funds toward the cost to construct the Project.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the Project(s) and all payment(s) therewith; provided however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the advertisement of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement
5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Gilbert
Town Manager
1025 S Gilbert Road
Gilbert, AZ 85296-3401


7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

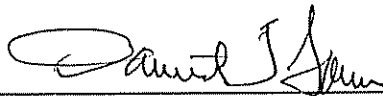
IN WITNESS WHEREOF, the parties hereto have executed this Agreement

TOWN OF GILBERT

STATE OF ARIZONA

Department of Transportation

By 
KENT COOPER
Town Manager

By 
DANIEL S. LANCE, P E
Deputy State Engineer

ATTEST

By 
CATHERINE TEMPLETON
Town Clerk

EXHIBIT A

AGREEMENT

This Agreement entered into this ____ day of _____, 20__ by and between the Town of Gilbert, Arizona ("Town"), a municipal corporation, and _____ ("the Developer"), a _____ corporation.

RECITALS

A. Developer has submitted an application to construct or develop a noise sensitive use within the Santan Freeway Corridor Overlay District known as the _____ Subdivision ("Project") and is required to construct a noise barrier meeting the standards and requirements of Ordinance _____ ("Ordinance").

B. The noise analysis provided by the Developer pursuant to the Ordinance identified _____ alternatives for location of the noise barrier. The preferred alternative requires location of the noise barrier within the right-of-way of the State of Arizona, Department of Transportation ("the State") for the Santan Freeway, which noise barrier shall be constructed by the State.

C. To utilize the preferred alternative, the Developer has elected to place on deposit with the Town a sum equivalent to the Lump Sum Cost of Construction for the noise barrier as approved by the State. This deposit shall be for the construction of the noise barrier and applied to the construction of the Santan Freeway, by the State, and thus satisfy the Developer's obligation under the Town's Ordinance.

D. Town has entered into an Intergovernmental Agreement with the State to provide for the transfer of the deposit to the State and to require the State to apply the deposit to the costs of construction of the noise barrier for the Developer, during construction of the Santan Freeway.

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, the parties agree as follows:

1. The Developer shall deposit with the Town the amount of \$_____, which is the Lump Sum Cost of Construction of a noise wall benefiting the Project as approved by the State. Until the funds deposited by the Developer are transferred from the Town to the State pursuant to the Intergovernmental Agreement between the Town and the State, such funds shall be placed in a segregated account of the Town, and in no event shall the Town use or apply the deposit except as specifically set forth herein.

2. The Lump Sum Cost of Construction deposited pursuant to Paragraph 1, shall satisfy the Developer's obligation to construct a noise barrier for the Project pursuant to the Ordinance.

DEVELOPER

TOWN OF GILBERT

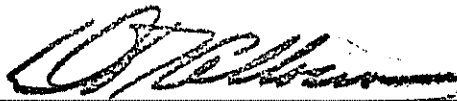

NAME & TITLE OF SIGNATORY

Mayor

RESOLUTION

BE IT RESOLVED on this 1st day of November, 2000, that I, the undersigned MARY E. PETERS, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the INTERMODAL TRANSPORTATION DIVISION, to enter into an agreement with the TOWN OF GILBERT for the purpose of defining the responsibilities for the State to construct noise barriers and approve a sum equivalent to the Lump Sum Cost of Construction for the noise barrier, within State rights of way, during the State's construction of the Santan Freeway, and that the Town will deposit the agreed upon amount (funded by the Developers) with the State, thus satisfying the Developer's obligation under the Town's Ordinance.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer or higher for approval and execution.

A handwritten signature in dark ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

RECEIVED

JUN 6 - 2001

VALLEY PROJECT
MANAGEMENT

RESOLUTION NO. 2255

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF GILBERT, ARIZONA RELATED TO THE CONSTRUCTION OF NOISE BARRIERS ADJACENT TO THE SAN TAN FREEWAY.

WHEREAS, the Town has adopted Ordinance No. 1250 setting forth requirements for the construction of noise barriers by developers when noise sensitive uses will be constructed in the Santan Freeway Corridor Overlay District of the Town; and

WHEREAS, in many cases, a developer's preferred alternative is for the Arizona Department of Transportation (ADOT) to construct the noise barrier with funds deposited by the developer; and

WHEREAS, the Town Council believes it to be in the best interest of the Town to enter into an Intergovernmental Agreement with ADOT setting forth the agreements of the Town and ADOT for the construction of noise barriers in the Santan Freeway Corridor Overlay District.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona that the Town Manager be and he is hereby authorized and directed to enter into and to execute on behalf of the Town that Intergovernmental Agreement between the State of Arizona and the Town of Gilbert numbered AG Contract Number KR01-0261TRN (ESC File Number JPA00-185).

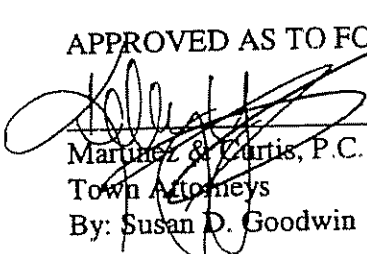
PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 29th DAY OF May, 2001.


Cynthia L. Dupham, Mayor


ATTEST:


Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:


Martinez & Curtis, P.C.
Town Attorneys
By: Susan D. Goodwin

I hereby certify the above foregoing Resolution No. 2255 was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on May 29, 2001, and that quorum was present thereat and that the vote thereon was 6 ayes and 0 nays and 0 abstentions. 1 Council members were absent or excused.

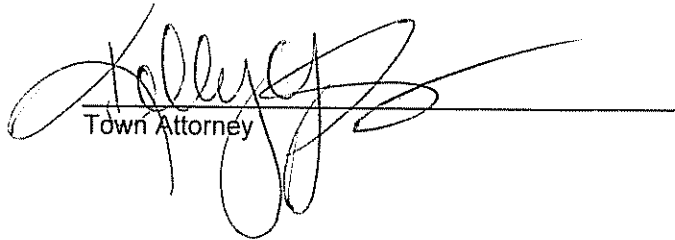

Catherine Templeton, Town Clerk
Town of Gilbert

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APPROVAL OF THE TOWN OF GILBERT ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF GILBERT, and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this _____ day of _____ 2001.


Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

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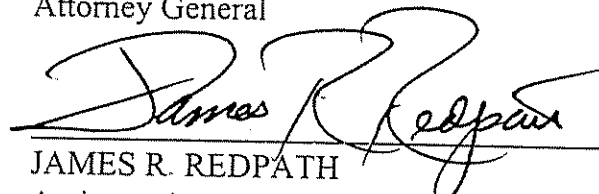
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-0261TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED June 18, 2001.

JANET NAPOLITANO
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/689129

Enc.